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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WILLIAMS-SONOMA, INC.,  
Plaintiff,  
v.  
AMAZON.COM, INC.,  
Defendant.

Case No.: 18-cv-07548-AGT

**SECOND AMENDED AND  
SUPPLEMENTAL COMPLAINT  
FOR DAMAGES AND INJUNCTIVE  
RELIEF**

**JURY TRIAL DEMAND**

Judge: Honorable Alex G. Tse

1 Plaintiff Williams-Sonoma, Inc. (“WSI” or “Plaintiff”) hereby amends its first amended  
2 and supplemental complaint in this second amended and supplemental complaint (“SAC”) against  
3 Defendant Amazon.com, Inc. (“Amazon” or “Defendant”), which states as follows:

4 **INTRODUCTION**

5 1. This is an action for infringement of United States Patent Nos. D815452,  
6 D836823, D836822 and D818750 under the Patent Act, 35 U.S.C. §271; infringement and  
7 dilution of Plaintiff’s famous federally-registered service mark WILLIAMS-SONOMA under  
8 Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1); infringement of Plaintiff’s common law  
9 trademarks under Section 32(1) of the Lanham Act, 15 U.S.C. §1125; unfair competition and  
10 false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a); copyright  
11 infringement under 17 U.S.C. § 106; and for substantial and related claims under the statutory and  
12 common laws of the State of California.

13 2. The claims stated herein arise from Defendant’s pattern of trading upon WSI’s  
14 goodwill and infringing WSI’s intellectual property, including through Defendant’s unauthorized  
15 use of the registered service mark WILLIAMS-SONOMA and WSI’s common law trademarks,  
16 as well as Defendant’s copying of Plaintiff’s proprietary designs and unauthorized commercial  
17 manufacture, use, importation, offer for sale, and sale of infringing goods in connection with  
18 home goods, lamps, chairs, and other furniture and lighting products, and Amazon’s infringement  
19 of WSI’s copyrighted photographs.

20 3. In particular, WSI owns a federally-registered incontestable service mark for  
21 online retail services and the exclusive right to use its WILLIAMS-SONOMA mark in connection  
22 with such services. In violation of that exclusive right, Amazon has set up an unauthorized  
23 WILLIAMS-SONOMA branded store on its website, falsely claiming that these retail services are  
24 “by Williams-Sonoma” and leading to a variety of customer complaints misdirected to WSI that  
25 actually concern Amazon’s unauthorized retail services. Amazon further directly participates in  
26 this service mark infringement and dilution of WSI’s exclusive right to provide online retail  
27 services by using the WILLIAMS-SONOMA mark in direct email marketing campaigns that  
28 promote Amazon’s own online retail services as well as directly fulfilling orders for putative

1 WILLIAMS-SONOMA products. Many of these products have been the subject of customer  
2 complaints on the Amazon website, are not subject to WSI's quality control measures, and/or  
3 have been damaged or altered such that the WILLIAMS-SONOMA mark no longer properly  
4 applies.

5 4. Not content to misrepresent itself as an authorized purveyor of WILLIAMS-  
6 SONOMA products, Amazon has taken its unlawful conduct a step further by infringing upon a  
7 wide spectrum of WSI intellectual property rights in also setting up competing Amazon brands  
8 that sell knockoffs of WSI products. Specifically, "Rivet," an Amazon furniture and housewares  
9 product line, sells knockoffs of WSI's popular west elm® brand products. These knockoffs  
10 infringe WSI's design patent and trademark rights. Amazon's course of conduct reflects  
11 widespread effort on its part to compete unfairly with WSI.

12 5. Additionally, Amazon is infringing WSI's copyrighted. The Williams-Sonoma  
13 brand represents upmarket products and services, and this extends to the sophisticated imagery  
14 and quality content offered in Williams-Sonoma's catalogs and website. WSI invests significant  
15 resources in developing polished "lifestyle" product photographs for its catalogs, which have  
16 received widespread recognition and become a popular coffee table accessory. WSI owns  
17 numerous registered copyrights in its images on its website and its catalogs and the product  
18 photos contained therein.

19 6. Amazon selects, copies, and publicly displays WSI's copyrighted photographs in  
20 order to sell products on its marketplace, constituting direct copyright infringement. Amazon  
21 determines the content of its product listing pages, including product photographs, in order to  
22 drive sales. Amazon is not a mere passive recipient and publisher of content supplied by others.  
23 Rather, Amazon exerts systematic control over every element of its product listing pages,  
24 including through Amazon's algorithmic selection of the content for numerous elements on those  
25 pages. Multiple sellers of a product can submit proposed photographic content to Amazon's  
26 "catalog," and *Amazon* then selects which content is placed and featured on a single product  
27 listing page associated with such product—not the particular seller. Thus, when multiple images  
28 exist for a product, Amazon, by and through its algorithms, selects which product image, among

1 other elements, is most likely to make the sale and displays that image on the public listing page  
2 for the product.

3 7. Amazon's algorithms have repeatedly selected WSI's copyrighted images to copy  
4 and display on Amazon's product listing pages. Amazon benefits commercially from the sales  
5 that result from this use of WSI's images. Amazon cannot evade liability for copyright  
6 infringement simply because its photographic editor is an algorithm rather than a human.

7 8. As an example, Amazon is using the following photograph of Williams-Sonoma's  
8 peppermint bark:



16 Copyright Reg. No. TX0007818118. Because multiple sellers are listed for this product on  
17 Amazon, it is reasonable to infer that Amazon, by and through its use of algorithmic image  
18 selection among multiple seller submissions, selected this image for copying and public display  
19 on the product listing page. Accordingly, Amazon has directly infringed WSI's copyright  
20 because it is through Amazon's volitional act that the copyrighted image was reproduced and  
21 displayed as part of the product listing.

22 9. While WSI attempts to monitor all such product listings and has identified  
23 numerous other product listings making an unauthorized display of photographs owned or  
24 exclusively licensed by WSI, WSI is not privy to Amazon's data regarding the sellers for each  
25 product. Such data will reveal exactly which listings involve Amazon's selection, reproduction  
26 and display of the WSI photographs. Discovery will show the scope of additional copyright  
27 infringements by Amazon.  
28



1 window coverings, children's furniture and products, and other similar products and accessories.

2 WSI is a Delaware corporation and is headquartered in San Francisco, California.

3 16. Amazon.com, Inc. is one of the largest online retailers in the world. Defendant is a  
4 Delaware corporation with offices in and employees working in this district, and conducts brick-  
5 and-mortar retail and online retail operations in this district. Amazon distributes its products,  
6 including the infringing products at issue in this litigation, throughout the United States, including  
7 California and in this judicial district.

### 8 **FACTS**

#### 9 **A. The Williams-Sonoma Brand and Intellectual Property**

10 17. In 1956, WSI's founder, Chuck Williams opened the first Williams-Sonoma®  
11 store in Sonoma, California.

12 18. Chuck Williams' store set a standard for customer service and helped fuel a  
13 revolution in American cooking and entertaining that continues to this day. In the decades that  
14 followed, the quality of WSI's products and WSI's customer-first approach to business have  
15 facilitated the expansion of the WILLIAMS-SONOMA brand beyond the kitchen into nearly  
16 every area of the home. WSI has pursued continuous innovation in its delivery of retail services  
17 and has been operating an online storefront since 1999—long before significant penetration of  
18 broadband internet services into the U.S. market.

19 19. Today, Williams-Sonoma, Inc. is one of the United States' largest e-commerce  
20 retailers with some of the best known and most beloved brands in the industry. WSI sells  
21 nationwide and internationally through over 600 retail stores, its catalogs and its websites. Over  
22 50% of WSI's sales occur via its comprehensive e-commerce platform, which operates through  
23 eight main websites as well as through online gift registries that correspond with its brands.

24 20. WSI devotes significant resources to developing innovative, inherently distinctive,  
25 and high-quality products to sell via its proprietary retail channels. WSI is well known for its  
26 kitchenwares, furniture, décor items, and other home goods, as well as for its high-quality brick-  
27 and-mortar, catalog, and online retail store services.

1           21.     The exemplary service WSI's brands provide at retail and through e-commerce is  
2 central to WSI's business model. The in-store and e-commerce services that WSI offers are  
3 complemented by its own network of customer care centers, manufacturing and distribution  
4 facilities, and other service hubs.

5           22.     The WILLIAMS-SONOMA brand's online presence is strong, not only on its own  
6 website, but on the various social media platforms through which it engages with the public.  
7 WSI's Instagram account has over 850,000 followers. Its Facebook account has over 910,000  
8 followers. Its Pinterest account has over 270,000 followers. Its Twitter account has over 100,000  
9 followers. Its YouTube account has over 66,000 subscribers. And WSI's blog receives an  
10 average of 600,000 page views per month.

11           23.     WSI has used the WILLIAMS-SONOMA mark in commerce throughout the  
12 United States continually since at least 1956 and has invested tens of millions of dollars  
13 promoting its brand under the famous WILLIAMS-SONOMA mark (the "WILLIAMS-  
14 SONOMA Mark").

15           24.     WSI owns numerous valid and incontestable United States federal trademark and  
16 service mark registrations for the famous WILLIAMS-SONOMA Mark, including, *inter alia*,  
17 Reg. No. 2,353,758 covering "retail store services, mail order catalog services, and on-line retail  
18 store services featuring culinary equipment, housewares, kitchenware and cookware" in  
19 International Class 35, registered on May 30, 2000; and Reg. No. 2,410,528 for, *inter alia*, "on-  
20 line gift registry services" in International Class 35, registered on December 5, 2000. True and  
21 correct copies of WSI's registrations for the WILLIAMS-SONOMA Mark are attached hereto as  
22 **Exhibit A.**

23           25.     As a result of its widespread, continuous and exclusive use of the WILLIAMS-  
24 SONOMA Mark to identify its goods and services and WSI as their source, WSI enjoys valid and  
25 subsisting federal and state common law rights to the WILLIAMS-SONOMA Mark.

26           26.     The goods and services WSI offers under the WILLIAMS-SONOMA Mark are of  
27 high quality. WSI devotes an enormous amount of resources to product development and quality  
28 control and to providing customer service to customers of its retail channels, all to ensure that the

1 goods and services it offers are reflective of, and consistent with, its brand's prestige.

2 27. To protect the integrity of its brand, WSI does not license the WILLIAMS-  
3 SONOMA Mark in connection with online retail services.

4 28. As a result of its distinctiveness, widespread use and promotion throughout the  
5 United States, WSI's WILLIAMS-SONOMA Mark is famous within the meaning of Section  
6 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and became famous prior to the acts of Defendant  
7 alleged in this Complaint.

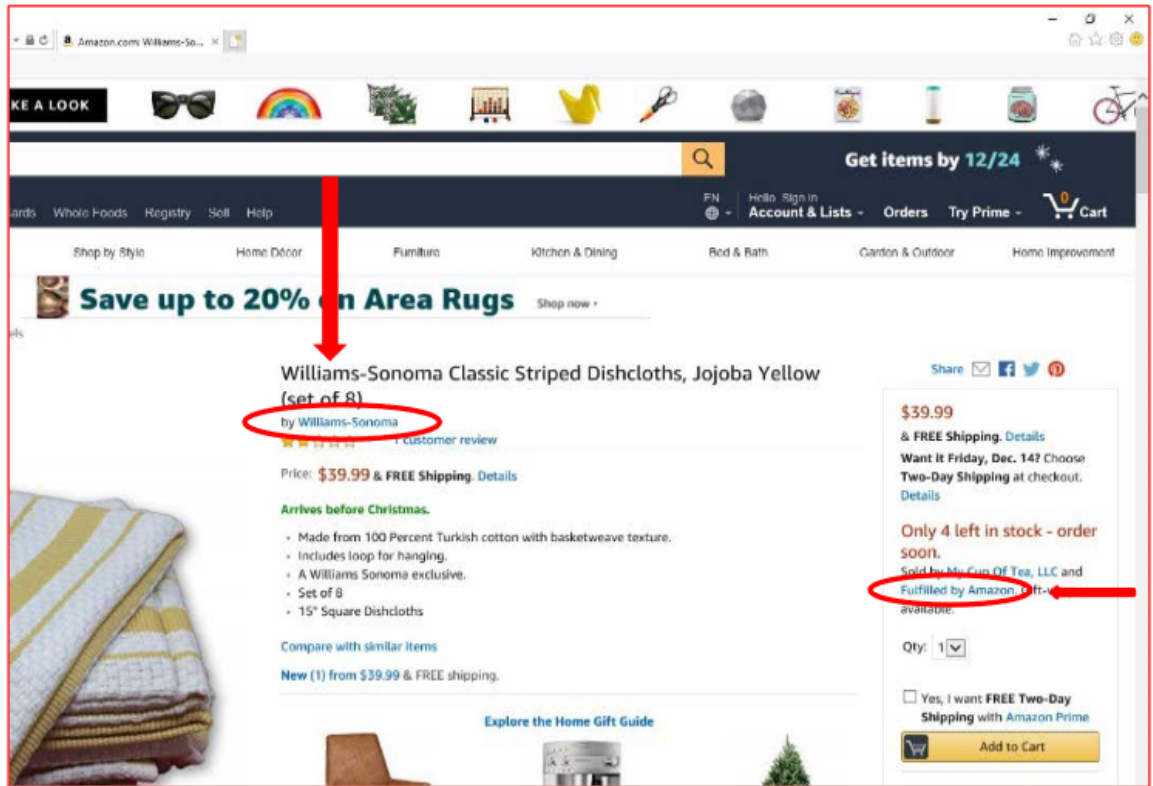
8 **B. Amazon's Unauthorized Use of the WILLIAMS-SONOMA Mark**

9 29. Despite WSI's longstanding rights in the WILLIAMS-SONOMA Mark, and  
10 without WSI's authorization, Defendant recently began using a mark identical to WSI's  
11 WILLIAMS-SONOMA Mark (the "Counterfeit Mark") to advertise, promote and offer  
12 competing retail services.

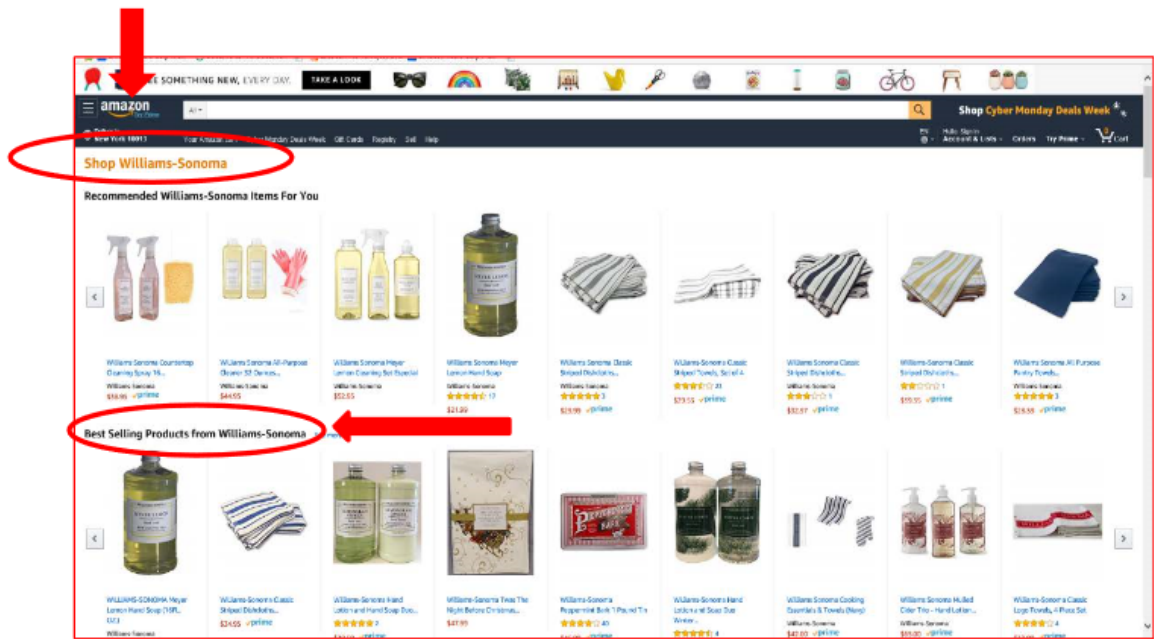
13 30. Defendant has been engaged in the unauthorized promotion and offering of online  
14 retail services and goods for sale using the Counterfeit Mark.

15 31. Specifically, Defendant displays the Counterfeit Mark on its website in a  
16 confusing manner that is likely to lead, and has led, consumers to believe that Defendant's  
17 platform is authorized by or is otherwise affiliated with, associated with, or approved by WSI.  
18 Specifically, at the top of product pages for purported Williams-Sonoma products for sale on the  
19 <amazon.com> platform and "Fulfilled by Amazon," the phrase "by Williams-Sonoma" appears  
20 in blue font with a hyperlink, immediately above the product image and price, as shown below:  
21  
22  
23  
24  
25  
26  
27  
28





32. When a customer clicks on the blue hyperlink for “by Williams Sonoma” above the product image, the hyperlink leads to a landing page that prominently displays the phrase “Shop Williams-Sonoma” in bright yellow at the top, thus falsely indicating that consumers are browsing a shop offered by, authorized by, or affiliated with WSI. Further down the page there is an additional indication of “Best Selling Products from Williams-Sonoma,” again falsely implying that WSI is the one offering its products for sale on the Amazon website. These misleading elements are shown below:



33. Further enhancing confusion, the Amazon “Shop Williams-Sonoma” page often uses WSI’s own copyrighted photos and product imagery. The use of WSI’s own photos of its own products on the Amazon “Shop Williams Sonoma” page strengthens the connection between Amazon’s unauthorized online retail commerce services and WSI’s authorized WILLIAMS-SONOMA website, creating a strong impression of affiliation between the two.

34. Amazon also promotes its online retail services under the Counterfeit Mark by using the WILLIAMS-SONOMA Mark to prospect for sales by sending targeted email to consumers and by purchasing keyword advertising that Amazon uses to serve misleading advertisements suggesting that Amazon is an authorized WILLIAMS-SONOMA retailer.

35. For example, on or about November 25, 2018, Amazon sent a marketing prospecting email to Janet Hayes, President of the Williams Sonoma brand, with the subject line that read: “Janet: Williams-Sonoma Peppermint Bark 1 Pound Tin and more items for you.” A true and correct copy of that email is attached hereto as **Exhibit B** (the “November 25, 2018 Email”). This email, by its use of the Counterfeit Mark, creates the false impression that Amazon’s online retail service is affiliated with, authorized by, or otherwise related to Williams-Sonoma.

36. Moreover, Amazon's November 25, 2018 Email contains materially misleading and deceptive statements. The body of the email referred to "millions of our items from our vast selection at great prices." While the email represents that Amazon offers "great prices" on the products advertised, the specific Williams-Sonoma product featured in that email's subject line and body is advertised in the email for a price of \$47.35 for a 1 pound tin—nearly double the \$28.95 price at which WSI sells the same product on its own authorized e-commerce site. Images of the product page for Williams-Sonoma Peppermint Bark on Amazon's e-commerce platform compared to the same product on WSI's e-commerce platform are attached hereto as **Exhibit C**.

37. Amazon also purchases keywords nearly identical to the WILLIAMS-SONOMA Mark and uses them to serve misleading advertisements in search engine results. For example, a search on the words "williams sonoma" in the Google-toolbar on Safari for iOS returns as the second result a paid advertisement by Amazon for a competing WILLIAMS & SONOMA branded retail offering. The advertisement, depicted below, prominently features a colorable imitation of the WILLIAMS-SONOMA Mark (using an ampersand rather than a hyphen) as the leading text for a "Williams & Sonoma at Amazon®" site which Amazon further describes as an "Amazon Official Site." The advertisement is misleading to ordinary consumers who are likely to believe that they were purchasing goods from an "official" online retail source authorized by



WSI. Consumers who are confused into believing that Amazon is an authorized WILLIAMS-SONOMA retail outlet may not realize that their failure to locate a product is not indicative of the selection available from WSI. Through this diversion, WSI also loses the opportunity to sell its

1 other goods to consumers who are tricked into visiting Amazon rather than the authorized WSI  
2 website.

3 38. The services Amazon offers under the Counterfeit Mark to consumers also appear  
4 to be deficient in quality and damaging to the Williams-Sonoma brand. Online reviews of  
5 WILLIAMS-SONOMA branded goods offered on Amazon's e-commerce platform and "Fulfilled  
6 by Amazon"—but not subject to WSI's quality control measures—feature complaints about  
7 higher prices than charged for the same products on WSI's authorized e-commerce sites, products  
8 delivered that do not match the specifications advertised, and/or products sent without necessary  
9 parts. A sampling of such reviews is attached hereto as **Exhibit D**. Pursuant to Rule 11(b), WSI  
10 further alleges that discovery is likely to show sales of a wide variety of WILLIAMS-SONOMA  
11 branded products using misleading designations, including perishables that cannot be delivered in  
12 a safe fashion, through the "by Williams-Sonoma" site "Fulfilled by Amazon."

13 39. Amazon's infringing acts as alleged herein have caused and are likely to cause  
14 confusion, mistake and deception among the relevant consuming public as to the source or origin  
15 of Defendant's services and have deceived and are likely to deceive the relevant consuming  
16 public into believing, mistakenly, that Defendant's services originate from, are associated or  
17 affiliated with, or otherwise authorized by WSI.

18 40. Among the harm caused by Amazon's infringing acts, consumers may come to  
19 associate WSI's WILLIAMS-SONOMA Mark with overpriced, low-quality or potentially unsafe  
20 goods or services.

21 41. Indeed, Defendant's infringing acts as alleged herein have already resulted in  
22 actual confusion. For example, on November 5, 2018, a customer at a WILLIAMS-SONOMA  
23 branded retail store informed a WSI employee that the customer was appalled that WSI would  
24 sell its products on Amazon for double the price WSI charges in its WILLIAMS-SONOMA  
25 branded stores.

26 42. Amazon's acts are willful, with the deliberate intent to trade on the goodwill of  
27 WSI's WILLIAMS-SONOMA Mark, cause confusion and deception in the marketplace, and  
28 divert customers of WSI's services to Amazon.

1           43. Amazon is causing, and unless restrained, will continue to cause damage and  
 2 immediate irreparable harm to WSI and to its valuable reputation and goodwill with the  
 3 consuming public, for which damage WSI has no adequate remedy at law.

4                           **C.     The West Elm Brand and Intellectual Property**

5           44. WSI also owns the west elm® brand (“West Elm”), which was launched in  
 6 Brooklyn, New York in 2002.

7           45. Mixing clean lines, natural materials and handcrafted collections from the U.S. and  
 8 around the world, West Elm creates unique, affordable home furnishings and accessories for  
 9 modern living. From its commitment to Fair Trade Certified, local and handcrafted products, to  
 10 its community-driven in-store events and collaborations, to its role as part of an active community  
 11 on social media, everything West Elm does is designed to make an impact.

12           46. West Elm has retail locations in over 85 cities in the United States, as well as in  
 13 Canada, Mexico, Australia, the United Kingdom, and the Middle East in addition to its an online  
 14 storefront at <westelm.com>.

15           47. West Elm’s online presence is strong not only on its own website, but on the  
 16 various social media platforms through which it engages with the general public. West Elm’s  
 17 Instagram account has over 1,870,000 followers. Its Facebook account has over 954,000  
 18 followers. Its Pinterest account has over 510,000 followers. Its Twitter account has over 98,000  
 19 followers. Its YouTube account has over 30,000 subscribers. And West Elm’s blog has  
 20 approximately 100,000 subscribers and unique monthly visitors.

21           48. Over 90% of WSI’s WEST ELM branded products are exclusive to WSI and  
 22 designed by its West Elm in-house design staff. WSI’s West Elm brand focuses heavily on the  
 23 quality and sourcing of its products, and works to use organic, non-toxic, reclaimed, or recycled  
 24 materials and make sustainably-sourced products.

25           49. WSI devotes significant resources to developing innovative and inherently  
 26 distinctive products to sell exclusively in its West Elm retail channels. WSI also devotes an  
 27 enormous amount of product development and quality control resources to its West Elm products  
 28 to ensure that they are reflective of and consistent with the brand’s prestige. These products

1 accompany a range of other products for the home that are also often the product of proprietary  
2 designs or innovations.

3 50. Among its West Elm products, WSI has developed a line of unique and distinctive  
4 furniture, lighting and other home goods, often under distinctive trademark names identifying  
5 product lines within the West Elm offering.

6 51. The goods offered and sold under the West Elm brand have been favorably  
7 received by the U.S. consumer market, and WSI has expended significant sums in advertising and  
8 promotion, including, *inter alia*, internet marketing, and has built up substantial goodwill and  
9 reputation for both the West Elm brand and for the common law trademarks used in connection  
10 with the West Elm products at issue in this litigation.

#### 11 **D. Amazon's Rivet Brand**

12 52. On or about November 2017, Amazon announced the launch of its private-label  
13 Rivet brand, under which Amazon sells furniture, lighting, and other home goods. Rivet is  
14 among a handful of recently-launched private label lines offered under Amazon's "Amazon  
15 Home" division.

16 53. Amazon's Rivet line is available exclusively on amazon.com. Amazon's Rivet  
17 brand markets and sells an assortment of products which are strikingly similar to West Elm's.

18 54. Amazon advertises its Rivet brand as a combination of "Mid-Century and  
19 Industrial Modern design" with "geometric shapes, sleek lines and mixed materials" designed to  
20 bring consumers "affordable pieces" – directly positioning itself as a competitor of West Elm's  
21 line of modern furniture, which focuses on "modern design," "clean design" and "affordability."

22 55. Under its Rivet brand, Amazon sells and offers for sale a line of products that are  
23 colorable imitations of WSI's distinctive patented and/or proprietary designs, and which trade  
24 upon WSI's goodwill and otherwise unfairly compete with or falsely imply an association with or  
25 endorsement by WSI.

26 56. Throughout its Rivet line, Amazon has copied WSI's products and intellectual  
27 property, and used without authorization WSI's common law trademarks intentionally in order to  
28 capture and trade upon the goodwill and reputation of WSI and its genuinely affiliated brands. It



1 is implausible Amazon could have conceived of a product line with nearly identical product  
 2 designs which feature product names containing the very same non-descriptive terms WSI uses in  
 3 connection with those products, other than by intentionally undertaking to copy WSI's West Elm  
 4 product line and appropriate the trademarks WSI uses in connection with that line.

5 57. As described below, Amazon has unfairly and deceptively engaged in a  
 6 widespread campaign of copying WSI's designs and marketing those designs under trademarks  
 7 similar to those used by WSI in connection with those products.

8 **E. Infringement of WSI's Orb Chair Design and Trademark**

9 58. On or about December 2016, West Elm introduced a chair featuring a novel and  
 10 distinctive design and named it the "Orb" Dining Chair (the "WSI Orb Chair"). The WSI Orb  
 11 Chair was designed by West Elm's in-house designers and named by West Elm's in-house  
 12 marketing team. The current retail price of the Orb Chair as offered by West Elm is \$299.00  
 13 USD.

14 59. On January 11, 2017, WSI filed a design patent application entitled "Chair," with  
 15 the United States Patent Office ("PTO") claiming the design of the WSI Orb Chair.

16 60. On April 17, 2018, the PTO duly and lawfully issued Patent No. D815452 ("the  
 17 '452 Patent"), entitled "Chair," which protects the novel design of the WSI Orb Chair. A true and  
 18 correct copy of the '452 Patent is attached hereto as **Exhibit E**.

19 61. WSI owns all right, title and interest in and to the '452 Patent.

20 62. The '452 Patent claims the ornamental design for a chair, as shown and described  
 21 therein. The WSI Orb Chair embodies the '452 Patent.

22 63. In connection with the WSI Orb Chair, WSI has sold, offered for sale, and  
 23 advertised products, namely chairs, under the common law trademark "ORB" since as early as  
 24 December 2016.

25 64. The WSI Orb Chair has been an outstanding commercial success. In the first ten  
 26 months of 2018 alone, WSI's sales of this single item exceeded \$2,000,000. The WSI Orb Chair  
 27 has been favorably featured in numerous interior design and lifestyle publications, such as  
 28 People.com, POPSUGAR, MyDomaine (which has featured the WSI Orb Chair on multiple

1 occasions), Domino, Lonny, Apartment Therapy (which featured the WSI Orb Chair on multiple  
2 occasions) and HGTV. Representative copies of some of the recognition the WSI Orb Chair has  
3 gained in the press are attached hereto as **Exhibit F**.

4 65. WSI has expended significant sums in advertising and promotion, including, *inter*  
5 *alia*, internet marketing, and has built up substantial goodwill and reputation for the WSI Orb  
6 Chair.

7 66. As a result of this extensive marketing and sales, the trademark “ORB” (the “Orb  
8 Mark”) has become a means by which WSI’s product is identified by the industry and the public  
9 and distinguished from the goods of others. The ORB Mark has come to symbolize valuable  
10 goodwill which WSI enjoys.

11 67. On or about March 19, 2018, Amazon began offering for sale its Rivet Modern  
12 Upholstered Orb Office Chair (the “Amazon Orb Chair”). Amazon has continued offering for  
13 sale and selling that chair through at least the first few months of 2019.

14 68. WSI owns the patented design for its WSI Orb Chair as illustrated in its patent  
15 claims, and the Amazon Orb Chair is so highly similar that the ordinary observer would be  
16 confused by the imitation. Images depicting the WSI Orb Chair and the Amazon Orb Chair side-  
17 by-side are attached hereto as **Exhibit G**. That similarity is reinforced by the infringing use of  
18 exactly the same non-descriptive word mark in conjunction with the identical design.

19 69. Notwithstanding WSI’s rights in the design of the WSI Orb Chair, Amazon has  
20 manufactured, imported, offered for sale and/or sold chairs which are a duplicate of the patented  
21 design of the WSI Orb Chair, are indistinguishable to the ordinary observer, and which appear to  
22 be of inferior quality to the WSI Orb Chair.

23 70. Amazon has induced infringement of the ’452 Patent by actively and knowingly  
24 inducing others to manufacture, import, offer for sale and/or sell chairs which infringe upon the  
25 patented design of the WSI Orb Chair.

26 71. In addition, through its unauthorized use of the term “ORB” in connection with the  
27 Amazon Orb Chair, Amazon has infringed upon WSI’s common law trademark rights in the ORB  
28 Mark in connection with chairs—goods identical to those upon which WSI uses its ORB Mark.



1                   **F.     Infringement of WSI’s Sphere + Stem Floor Lamp Design**

2           72.     In or about 2016, West Elm introduced a floor lamp featuring a novel and  
3 distinctive design and named it the “Sphere + Stem” Floor Lamp (the “WSI Floor Lamp”). The  
4 WSI Floor Lamp was designed by West Elm’s in-house designers. The current retail price of the  
5 WSI Floor Lamp as offered by West Elm is \$299.99 USD.

6           73.     On September 7, 2017, WSI filed a design patent application entitled “Lamp” with  
7 the United States Patent Office (“PTO”) claiming the design of the WSI Floor Lamp.

8           74.     On December 25, 2018, the PTO duly and lawfully issued Patent No. D836823  
9 (“the ’823 Patent”), entitled “Lamp” which protects the novel design of the WSI Floor Lamp. A  
10 true and correct copy of the ’823 Patent is attached hereto as **Exhibit H**.

11          75.     WSI owns all right, title and interest in and to the ’823 Patent.

12          76.     The ’823 Patent claims the ornamental design for a lamp, as shown and described  
13 therein. The WSI Floor Lamp embodies the ’823 Patent.

14          77.     Discovery will show that on or after March 18, 2018, Amazon began offering for  
15 sale its Rivet Retro Two-Orb Tree Lamp (the “Amazon Floor Lamp”). Amazon has continued  
16 offering for sale and selling that lamp through at least the first few months of 2019.

17          78.     WSI owns the patented design for its WSI Floor Lamp as illustrated in its patent  
18 claims, and the Amazon Floor Lamp is so highly similar that the ordinary observer would be  
19 confused by the imitation. Images depicting the WSI Floor Lamp and the Amazon Floor Lamp  
20 side-by-side are attached hereto as **Exhibit I**.

21          79.     Notwithstanding WSI’s rights in the design of the WSI Floor Lamp, Amazon has  
22 manufactured, imported, offered for sale and/or sold lamps which are a duplicate of the patented  
23 design of the WSI Floor Lamp, are indistinguishable to the ordinary observer, and which appear  
24 to be of inferior quality to the WSI Floor Lamp.

25          80.     Amazon has induced infringement of the ’823 Patent by actively and knowingly  
26 inducing others to manufacture, import, offer for sale and/or sell lamps which infringe upon the  
27 patented design of the WSI Floor Lamp.

1                   **G.     Infringement of WSI's Sphere + Stem Table Lamp Design**

2           81.     In or about 2016, West Elm introduced a table lamp featuring a novel and  
3 distinctive design and named it the "Sphere + Stem" Table Lamp (the "WSI Table Lamp"). The  
4 WSI Table Lamp was designed by West Elm's in-house designers. The current retail price of the  
5 WSI Table Lamp as offered by West Elm is \$199.00 USD.

6           82.     On September 7, 2017 WSI filed a design patent application entitled "Lamp," with  
7 the United States Patent Office ("PTO") claiming the design of the WSI Table Lamp.

8           83.     On December 25, 2018, the PTO duly and lawfully issued Patent No. D836822  
9 ("the '822 Patent"), entitled "Lamp" which protects the novel design of the WSI Table Lamp. A  
10 true and correct copy of the '822 Patent is attached hereto as **Exhibit J**.

11          84.     WSI owns all right, title and interest in and to the '822 Patent.

12          85.     The '822 Patent claims the ornamental design for a lamp, as shown and described  
13 therein. The WSI Table Lamp embodies the '822 Patent.

14          86.     Discovery will show that on or after March 8, 2018 Amazon began offering for  
15 sale its Glass Globe and Marble Table Lamp (the "Amazon Table Lamp"). Amazon has  
16 continued offering for sale and selling that lamp through at least the first few months of 2019.

17          87.     WSI owns the patented design for its WSI Table Lamp as illustrated in its patent  
18 claims, and the Amazon Table Lamp is so highly similar that the ordinary observer would be  
19 confused by the imitation. Images depicting the WSI Table Lamp and the Amazon Table Lamp  
20 side-by-side are attached hereto as **Exhibit K**.

21          88.     Notwithstanding WSI's rights in the design of the WSI Table Lamp, Amazon has  
22 manufactured, imported, offered for sale and/or sold lamps which are a duplicate of the patented  
23 design of the WSI Table Lamp, are indistinguishable to the ordinary observer, and which appear  
24 to be of inferior quality to the WSI Table Lamp.

25          89.     Amazon has induced infringement of the '822 Patent by actively and knowingly  
26 inducing others to manufacture, import, offer for sale and/or sell lamps which infringe upon the  
27 patented design of the WSI Table Lamp.

**H. Infringement of WSI's Pop-Up Storage Table Design**

90. In or about 2016, West Elm introduced a table featuring a novel and distinctive design and named it the "Mid-Century Pop-Up Storage Coffee Table" (the "WSI Pop-Up Table"). The WSI Pop-Up Table was designed by West Elm's in-house designers. The current retail price of the WSI Pop-Up Table as offered by West Elm is \$699.00 USD.

91. On January 13, 2017, WSI filed a design patent application entitled "Coffee Table" with the United States Patent Office ("PTO") claiming the design of the WSI Pop-Up Table.

92. On May 29, 2018, the PTO duly and lawfully issued Patent No. D818750 ("the '750 Patent"), entitled "Coffee Table" which protects the novel design of the WSI Pop-Up Table. A true and correct copy of the '750 Patent is attached hereto as **Exhibit L**.

93. WSI owns all right, title and interest in and to the '750 Patent.

94. The '750 Patent claims the ornamental design for a coffee table, as shown and described therein. The WSI Pop-Up Table embodies the '750 Patent.

95. Discovery will show that sometime during 2018, Amazon began offering for sale its Bowlyn Mid-Century Modern Wood Coffee Table (the "Amazon Pop-Up Table"). Amazon has continued offering for sale and selling that table at least through the first few months of 2019.

96. WSI owns the patented design for its WSI Pop-Up Table as illustrated in its patent claims, and the Amazon Pop-Up Table is so highly similar that the ordinary observer would be confused by the imitation. Images depicting the WSI Pop-Up Table and the Amazon Pop-Up Table side-by-side are attached hereto as **Exhibit M**.

97. Discovery will show that on or after September 20, 2018, Amazon began offering for sale its Rivet Modern Wood Coffee Table, 24"W, White Brass and Walnut (the "Amazon Modern Wood Table"). Amazon has continued offering for sale and selling that table at least through the first few months of 2019.

98. The Amazon Modern Wood Table is so highly similar that the ordinary observer would be confused by the imitation. Images depicting the WSI Pop-Up Table and the Amazon Modern Wood Table side-by-side are attached hereto as **Exhibit N**.

1           99.     Notwithstanding WSI's rights in the design of the WSI Pop-Up Table, Amazon  
2 has manufactured, imported, offered for sale and/or sold tables which are a duplicate of the  
3 patented design of the WSI Pop-Up Table, are indistinguishable to the ordinary observer, and  
4 which appear to be of inferior quality to the WSI Pop-Up Table.

5           100.   Amazon has induced infringement of the '750 Patent by actively and knowingly  
6 inducing others to manufacture, import, offer for sale and/or sell tables which infringe upon the  
7 patented design of the WSI Pop-Up Table.

8                               **I.     Infringement of WSI's Slope Chair Trademark**

9           101.   On or about June 2015, West Elm introduced the Slope Dining Chair (the "WSI  
10 Slope Dining Chair"), which was designed by West Elm's in-house designers and named by West  
11 Elm's in-house marketing team. The current retail price of the WSI Slope Dining Chair is  
12 \$399.00 USD.

13          102.   On or about June 2016, West Elm introduced the Slope Leather Swivel Office  
14 Chair (the "WSI Slope Office Chair"), which was designed by West Elm's in-house designers and  
15 named by West Elm's in-house marketing team. The current retail price of the WSI Slope Office  
16 Chair is \$449.00 USD.

17          103.   In connection with the WSI Slope Office Chair and WSI Slope Dining Chair (the  
18 "WSI Slope Chairs"), WSI has sold and offered for sale chairs under the SLOPE mark since at  
19 least June 2015.

20          104.   West Elm's WSI Slope Chair line has been an outstanding commercial success.  
21 The WSI Slope Dining Chair was featured in Architectural Digest in December 2016, and today,  
22 WSI's Slope Chairs continue to be immensely popular with consumers: In the first ten months of  
23 2018 alone, WSI's sales of the WSI Slope Office Chair have exceeded \$1,000,000 USD, and  
24 sales of the WSI Slope Dining Chair exceeded \$5,000,000 USD.

25          105.   WSI has expended significant sums in advertising and promotion, including, *inter*  
26 *alia*, internet marketing, and has built up substantial good will and reputation for the WSI Slope  
27 Chairs.  
28

1           106. As a result of WSI's extensive marketing and sales effort, the mark "SLOPE" (the  
2 "SLOPE Mark") has become a means by which WSI's products are identified by the trade and the  
3 public and distinguished from the goods of others. The SLOPE Mark has come to symbolize  
4 valuable good will which WSI enjoys.

5           107. On or about March 19, 2018, Amazon began offering for sale its Rivet Industrial  
6 Slope Top-Grain Leather Swivel Office Chair (the "Amazon Slope Chair"), which it sells for a  
7 price of \$279.00 USD. The Amazon Slope Chair looks just like, and aims to be directly  
8 competitive with, the WSI Slope Office Chair. Amazon has continued to offer for sale and sell  
9 that chair at least through the first few months of 2019.

10           108. Through its use of the mark "SLOPE" in connection with a directly competing  
11 product of nearly identical design, Amazon has infringed upon WSI's common law trademark  
12 rights in its SLOPE Mark in connection with chairs—goods identical to those upon which WSI  
13 uses its ORB Mark.

14           109. These are not the only products sold by Rivet that appear to be identical or nearly  
15 identical in design to West Elm. Amazon has engaged in a systematic campaign of copying  
16 WSI's West Elm products and infringing upon WSI's common law trademark rights in those  
17 products. Amazon deliberately chose to adopt West Elm's brand identity and create a Rivet  
18 brand that gives consumers the same overall visual impression as West Elm.

19           110. The Rivet products at issue in this action appear to be of inferior quality to the  
20 West Elm products. For example, the Amazon Slope Chair was advertised as a "leather" chair.  
21 However, customer reviews of the Amazon Slope Chair indicate that consumers find the quality  
22 of the material to be consistent with faux leather—not with genuine leather. WSI's West Elm  
23 Slope Chairs, by contrast, are constructed of genuine leather. The respective product descriptions  
24 for the Amazon Slope Chair and the WSI Slope Chairs are attached hereto as **Exhibit O**.

25           111. Amazon's inferior line of copycat products, marketed using infringing trademarks,  
26 has been causing, and unless restrained will continue to cause WSI irreparable harm.

**J. Williams-Sonoma Photographs and Copyrights**

112. Starting in the 1970's WSI has provided catalogs to its customers across the country which have now become a coffee table institution. WSI invests significant resources in developing content for the catalogs that WSI publishes. For decades, WSI has been projecting its "lifestyle" identity through its carefully curated catalogs by using high-quality photography that features its products in home settings as well as stand-alone images of products. WSI has registered and obtained numerous copyrights for WSI's catalogs and the photographs contained within.

113. For example, WSI is the owner of the copyright to the artistically-staged image of stacked peppermint bark, hereinafter referred to as "The Stacked Bark Image." The Image was composed, lighted and photographed by a professional who specializes in food photography. The Stacked Bark Image is protected under a valid and subsisting United States Copyright Registration No. TX0007818118 for "Williams-Sonoma December 2013: A Very Merry Table", hereinafter referred to as "The December 2013 Catalog", issued by the Copyright Office on December 24, 2013.



114. The December 2013 Catalog and The Stacked Bark Image are original, creative works of art, and WSI is the owner or exclusive licensee of all rights, title, and interest, including all rights under copyright, in The December 2013 Catalog and The Stacked Bark Image.

**Amazon's Product Detail Page**

115. Amazon owns and operates the website Amazon.com which contains product detail pages featuring products sold on the Amazon.com Online Store. Some of the products are sold by Amazon itself, others are sold by third parties it calls "marketplace sellers."

116. Whether Amazon sells the product or it is sold by marketplace sellers, it is Amazon who generates the product detail page. Unlike other marketplace platforms, Amazon does not permit sellers to make their own listings for each product they wish to sell. Rather, Amazon forces all sellers who are offering the same product to share a single product detail page. Amazon provides a detailed and specific set of guidelines and limitations about how to draft the

[Help](#) / [Manage Inventory](#) / [About products and listings](#)

## About products and listings

### Product information:

These details are common to every instance of the product on Amazon. For example, several sellers list Bose speakers on Amazon, so the general details about the product, such as the name and model number, are the same.

When more than one seller contributes data to a product, Amazon determines which seller's product information will be displayed on the product detail page. Learn more about fixing errors on a [product detail page](#).

content for such pages, what can and cannot be included, and what kinds of images to submit. The content submitted by the sellers goes into a large database that Amazon calls its “catalog.” When multiple sellers submit content for a particular product, it is Amazon who determines exactly which product information from the catalog will be displayed on the product detail page.

117. There are numerous different elements of each such product detail page that are independently selected by Amazon. Amazon uses multiple algorithms to evaluate and select the seller-contributed content for a wide variety of aspects of its product listings, including images. Discovery will show that after the algorithm selects an image, it is copied to a server for display on Amazon’s product detail page after Amazon’s algorithms vet, rank, and determine what images to display. Sellers do not whether their submitted images are selected for display on Amazon’s product detail page nor do they have control over how the algorithm selects the submitted images. Instead, Amazon has sole discretion over what images and content are chosen from its catalog to display publicly on its product detail pages. The end result is that no seller has created the product listing. Instead, in the word volunteered by one of Amazon’s employees designated by the company to testify on the topic, the product listing pages are a “Frankenstein” of elements selected by Amazon.



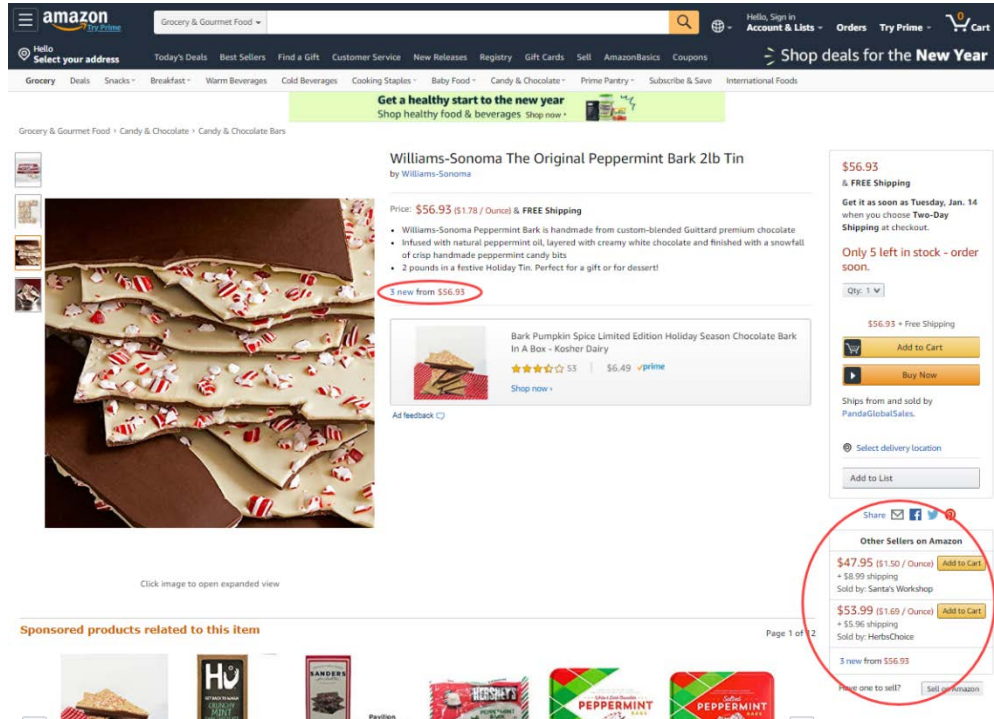
1           118. Amazon employs yet another algorithm to decide which seller will be selected for  
2 the “buy box.” The buy box is the all-important slot whereby a specific seller’s offer will be  
3 selected if the customer presses the “Buy Now” or “Add to Cart” buttons. Amazon’s selection of  
4 the seller for the buy box is all but determinative of the sale in the significant majority of cases.  
5 Particularly when coupled with its Frankenstein approach to the composition of the product detail  
6 pages, the selection of sellers is hardly the behavior of a mere disinterested “platform.” Amazon  
7 is picking the winners, and it is picking WSI’s photographs to sell their products. Amazon takes  
8 a cut of every transaction.

9           119. If an Amazon employee were composing these product detail pages from the  
10 submissions by third-party sellers, there is no doubt that Amazon would be liable for direct  
11 copyright infringement when that employee copied and displayed photographs in this  
12 unauthorized fashion. *Mavrix Photographs, LLC v. LiveJournal, Inc.*, 873 F.3d 1045 (9th Cir.  
13 2017). Amazon cannot avoid liability by delegating the task to an algorithm instead of a human  
14 being. Any other rule would leave consumers, employees, competitors, IP rightsholders and other  
15 stakeholders holding the bag for a wide variety of activity now controlled by software agents.  
16 Such a result would upend hundreds of years of common law development that places  
17 responsibility for unlawful activity, at a minimum, with those who have direct control of it.

18           **Amazon’s Unauthorized Use of WILLIAM-SONOMA’s Copyrighted Image**

19           120. Amazon’s product detail page for “Williams-Sonoma The Original Peppermint  
20 Bark 2lb Tin” used The Image without permission, consent, or license from WSI. The Image was  
21 used in a product detail page for a product offered for sale by multiple sellers.  
22  
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121. Amazon's algorithm selected and displayed The Image on Amazon's product detail page associated with Peppermint Bark using multi-factor criteria that Amazon employs to boost internet traffic and promote sales. This multi-factor selection constitutes a positive selection process that is tantamount to an employee exercising editorial control: selecting content and controlling what is displayed on Amazon's product listing webpage. Amazon's algorithm is the but-for cause of the reproduction and display of the images when there are multiple sellers making image submissions.

122. Moreover, Amazon's infringement of WSI's copyrighted photographs is willful. Amazon is aware of the fact that WSI's copyrighted images are being used on its product detail pages. Prior to filing this litigation and discovering the process by which Amazon selects the photographs for its product pages, WSI was under the mistaken impression that third party sellers were publishing these images. Accordingly, WSI actively sought enforcement of its copyrights by sending takedown notices to Amazon asking Amazon to remove the photographs WSI believed were being displayed by third parties. For the past three years, WSI discovered dozens or even hundreds of infringements of its images. Many of these product listings undoubtedly involved Amazon's selection of photographs supplied by multiple sellers. Accordingly,

discovery will show that Amazon has infringed numerous additional copyrights held by WSI.

123. Despite being on notice of these infringements and aware that Amazon was itself selecting those images for reproduction and display, Amazon took no measures to ensure that it did not continue reproducing and publicly displaying WSI's images. Amazon was at best deliberately indifferent to WSI's copyrights and at worst knowingly intended to exploit WSI's images for commercial purposes.

**FIRST CLAIM**  
**INFRINGEMENT OF U.S. PATENT NO. D815452**  
**(35 U.S.C. § 271)**

124. WSI repeats and realleges the allegations contained in paragraphs 1 through 123 as though fully set forth herein.

125. United States Patent No. D815452, entitled "Chair" was duly and lawfully issued by the United States Patent and Trademark office on April 17, 2018.

126. WSI is the owner of the entire right, title and interest in the '452 Patent and possesses all rights of recovery under the '452 Patent, including the right to recover damages.

127. The product information for the Orb Chair on the West Elm website prominently displays "U.S. Patent Number D815452" in the main "Overview" section of the product description.

128. Amazon, alone or in concert with others, has infringed the '452 Patent by making, using, selling, and offering for sale within this district and elsewhere in the United States, and importing into the United States, products such as the Amazon Orb Chair which infringe the '452 Patent. Amazon had constructive notice of WSI's patent through its marking. Pursuant to Rule 11(b), WSI alleges that discovery will show Amazon had actual knowledge that the design was patented and copied it anyway.

129. Amazon has infringed the '452 Patent by actively and knowingly inducing others to make, use, sell, offer for sale, and/or import into the United States products, including the Amazon Orb Chair, which infringe the '452 Patent.

130. Amazon's acts will continue unless enjoined by this Court.

131. WSI is harmed by Amazon's acts of infringement of the '452 Patent and will be

1 irreparably harmed unless Amazon is enjoined by this Court. WSI has no adequate remedy at law  
2 against Amazon's acts of infringement.

3 132. Amazon's infringing activity has caused WSI to suffer damages in an amount to be  
4 determined at trial.

5 **SECOND CLAIM**  
6 **INFRINGEMENT OF U.S. PATENT NO. D836823**  
7 **(35 U.S.C. § 271)**

8 133. WSI repeats and realleges the allegations contained in paragraphs 1 through 132 as  
9 though fully set forth herein.

10 134. United States Patent No. D836823, entitled "Lamp" was duly and lawfully issued  
11 by the United States Patent and Trademark office on December 25, 2018.

12 135. WSI is the owner of the entire right, title and interest in the '823 Patent and  
13 possesses all rights of recovery under the '823 Patent, including the right to recover damages.

14 136. The product information for the WSI Floor Lamp on the West Elm website  
15 prominently displays "U.S. Patent Number D836823" in the main "Overview" section of the  
16 product description.

17 137. Amazon, alone or in concert with others, has infringed the '823 Patent by making,  
18 using, selling, and offering for sale within this district and elsewhere in the United States, and  
19 importing into the United States, products such as the Amazon Floor Lamp which infringe the  
20 '823 Patent. Amazon had constructive notice of WSI's patent through its marking. Pursuant to  
21 Rule 11(b), WSI alleges that discovery will show Amazon had actual knowledge that the design  
22 was patented or that a patent was pending and copied it anyway.

23 138. Amazon infringed the '823 Patent by actively and knowingly inducing others to  
24 make, use, sell, offer for sale, and/or import into the United States products, including the  
25 Amazon Orb Chair, which infringe the '823 Patent.

26 139. Amazon's acts will continue unless enjoined by this Court.

27 140. WSI is harmed by Amazon's acts of infringement of the '823 Patent and will be  
28 irreparably harmed unless Amazon is enjoined by this Court. WSI has no adequate remedy at law  
against Amazon's acts of infringement.

1 141. Amazon's infringing activity has caused WSI to suffer damages in an amount to be  
2 determined at trial.

3 **THIRD CLAIM**  
4 **INFRINGEMENT OF U.S. PATENT NO. D836822**  
5 **(35 U.S.C. § 271)**

6 142. WSI repeats and realleges the allegations contained in paragraphs 1 through 141 as  
7 though fully set forth herein.

8 143. United States Patent No. D836822, entitled "Lamp" was duly and lawfully issued  
9 by the United States Patent and Trademark office on December 25, 2018.

10 144. WSI is the owner of the entire right, title and interest in the '822 Patent and  
11 possesses all rights of recovery under the '822 Patent, including the right to recover damages.

12 145. The product information for the WSI Table Lamp on the West Elm website  
13 prominently displays "U.S. Patent Number D836822" in the main "Overview" section of the  
14 product description.

15 146. Amazon, alone or in concert with others, has infringed the '822 Patent by making,  
16 using, selling, and offering for sale within this district and elsewhere in the United States, and  
17 importing into the United States, products such as the Amazon Table Lamp which infringe the  
18 '822 Patent. Amazon had constructive notice of WSI's patent through its marking. Pursuant to  
19 Rule 11(b), WSI alleges that discovery will show Amazon had actual knowledge that the design  
20 was patented and copied it anyway.

21 147. Amazon has infringed the '822 Patent by actively and knowingly inducing others  
22 to make, use, sell, offer for sale, and/or import into the United States products, including the  
23 Amazon Table Lamp, which infringe the '822 Patent.

24 148. Amazon's acts will continue unless enjoined by this Court.

25 149. WSI is harmed by Amazon's acts of infringement of the '822 Patent and will be  
26 irreparably harmed unless Amazon is enjoined by this Court. WSI has no adequate remedy at law  
27 against Amazon's acts of infringement.

28 150. Amazon's infringing activity has caused WSI to suffer damages in an amount to be  
determined at trial.

**FOURTH CLAIM**  
**INFRINGEMENT OF U.S. PATENT NO. D818750**  
**(35 U.S.C. § 271)**

151. WSI repeats and realleges the allegations contained in paragraphs 1 through 150 as though fully set forth herein.

152. United States Patent No. D818750, entitled “Coffee Table” was duly and lawfully issued by the United States Patent and Trademark office on May 29, 2018.

153. WSI is the owner of the entire right, title and interest in the ’750 Patent and possesses all rights of recovery under the ’750 Patent, including the right to recover damages.

154. The product information for the WSI Pop-Up Table on the West Elm website prominently displays “U.S. Patent Number D818750” in the main “Overview” section of the product description.

155. Amazon, alone or in concert with others, has infringed the ’750 Patent by making, using, selling, and offering for sale within this district and elsewhere in the United States, and importing into the United States, products such as the Amazon Pop-Up Table and Amazon Modern Wood Table which infringe the ’750 Patent. Amazon had constructive notice of WSI’s patent through its marking. Pursuant to Rule 11(b), WSI alleges that discovery will show Amazon had actual knowledge that the design was patented and copied it anyway.

156. Amazon has infringed the ’750 Patent by actively and knowingly inducing others to make, use, sell, offer for sale, and/or import into the United States products, including the Amazon Pop-Up Table and Amazon Modern Wood Table, which infringe the ’750 Patent.

157. Amazon’s acts will continue unless enjoined by this Court.

158. WSI is harmed by Amazon’s acts of infringement of the ’750 Patent and will be irreparably harmed unless Amazon is enjoined by this Court. WSI has no adequate remedy at law against Amazon’s acts of infringement.

159. Amazon’s infringing activity has caused WSI to suffer damages in an amount to be determined at trial.

**FIFTH CLAIM**  
**FEDERAL TRADEMARK INFRINGEMENT AND TRADEMARK COUNTERFEITING**  
**UNDER SECTION 32(1) OF THE LANHAM ACT**  
**(15 U.S.C. §1141(1))**

160. WSI repeats and realleges the allegations contained in paragraphs 1 through 159 as though fully set forth herein.

161. Defendant's unauthorized use in commerce of the Counterfeit Mark as alleged herein is likely to deceive consumers as to the origin, source, sponsorship, and/or affiliation of Defendant's services, and is likely to cause consumers to mistakenly believe that Defendant's services are offered, authorized, endorsed, or sponsored by Plaintiff, or that Defendant is in some way affiliated with or sponsored by Plaintiff. Defendant's conduct therefore constitutes service mark infringement and counterfeiting in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

162. Amazon has committed the foregoing acts of infringement and counterfeiting with full knowledge of WSI's prior rights in the WILLIAMS-SONOMA Mark and with the intent to cause confusion and trade on WSI's goodwill.

163. Amazon's conduct is causing immediate and irreparable harm and injury to WSI and to its goodwill and reputation and will continue to both damage WSI and confuse the public unless enjoined by this court. WSI has no adequate remedy at law.

164. WSI is entitled to injunctive relief and an award of actual damages, Defendant's profits, treble damages and profits, attorneys' fees, and costs under Sections 34 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117.

**SIXTH CLAIM**  
**FEDERAL TRADEMARK DILUTION OF THE WILLIAMS-SONOMA MARK**  
**(15 U.S.C. § 1125(C))**

165. WSI realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 164 as though fully set forth herein.

166. For decades, WSI has exclusively and continuously used and promoted its registered WILLIAMS-SONOMA Mark, both in the United States and throughout the world. The WILLIAMS-SONOMA Mark is widely recognized by the consuming public. This mark became

1 a famous and well-known symbol of Plaintiff and its products well before Defendant began  
2 offering services under its infringing mark.

3 167. Defendant is making use in commerce of a mark that dilutes and is likely to dilute  
4 the distinctiveness of WSI's WILLIAMS-SONOMA Mark by eroding the public's exclusive  
5 identification of this famous mark with WSI, tarnishing and degrading the positive associations  
6 and prestigious connotations of the WILLIAMS-SONOMA Mark, and otherwise lessening the  
7 capacity of the WILLIAMS-SONOMA Mark to identify and distinguish Plaintiff's retail and  
8 online retail services.

9 168. Amazon's actions demonstrate an intentional, willful, and malicious intent to trade  
10 on the goodwill associated with Plaintiff's WILLIAMS-SONOMA Mark and to cause dilution of  
11 that mark, which has and will cause great and irreparable injury to WSI.

12 169. Amazon has caused and will continue to cause irreparable injury to WSI's  
13 goodwill and business reputation, and dilution of the distinctiveness and value of WSI's famous  
14 and distinctive WILLIAMS-SONOMA Mark in violation of 15 U.S.C. § 1125(c). WSI is  
15 therefore entitled to injunctive relief and to Defendant's profits, actual damages, enhanced profits  
16 and damages, and reasonable attorneys' fees.

17 **SEVENTH CLAIM**  
18 **UNFAIR COMPETITION UNDER SECTION 43(A) OF THE LANHAM ACT**  
19 **(15 U.S.C. § 1125(A))**

20 170. WSI repeats and realleges the allegations contained in paragraphs 1 through 169 as  
21 though fully set forth herein.

22 171. Defendant's acts are likely to deceive consumers as to the origin, source,  
23 sponsorship and/or affiliation of Defendant's goods and services, and are likely to cause  
24 consumers to believe, contrary to fact, that Defendant's goods and services are sold or offered,  
25 authorized, endorsed, or sponsored by Plaintiff, or that Defendant is in some way affiliated with  
26 or sponsored by Plaintiff.

27 172. Defendant is knowingly and intentionally misrepresenting and falsely designating  
28 to the general public the affiliation, connection, association, origin, source, sponsorship,  
endorsement and approval of Defendant's services and goods, and intends to misrepresent and



1 falsely designate to the general public the affiliation, connection, association, origin, source,  
 2 approval, endorsement or sponsorship of Defendant's services and goods, so as to create a  
 3 likelihood of confusion by the public as to the affiliation, connection, association, origin, source,  
 4 approval, endorsement and sponsorship of Defendant's services and goods.

5 173. Defendant's acts are the result of Defendant's bad faith intent to misappropriate  
 6 the commercial advantage WSI has gained through its investments in its service mark, trademarks,  
 7 and the marketing, sale and promotion thereof.

8 174. Defendant's activities will cause their goods to be mistaken for the goods and  
 9 goodwill of WSI, and will cause consumer confusion between WSI's goods and those of  
 10 defendant, and have misled or will mislead the trade and the public into the false belief that WSI  
 11 and Defendant are affiliated or that Defendant's goods or services have their source in WSI or are  
 12 sponsored by WSI or associated with WSI.

13 175. Defendant's conduct as alleged herein constitutes trademark infringement, false  
 14 endorsement, false designation of origin, and unfair competition in violation of Section 43(a) of  
 15 the Lanham Act, 15 U.S.C. § 1125(a).

16 176. Defendant's conduct as alleged herein is causing immediate and irreparable harm  
 17 and injury to Plaintiff, and to its goodwill and reputation, and will continue to both damage  
 18 Plaintiff and confuse the consuming public.

19 177. As a result of Defendant's wrongful acts, Plaintiff has been damaged in an amount  
 20 not yet determined or ascertainable. At a minimum, Plaintiff is entitled to injunctive relief, an  
 21 accounting of Defendant's profits, damages and costs. Plaintiff is also entitled to punitive  
 22 damages, in light of the deliberate and malicious use of confusingly similar imitations of  
 23 Plaintiff's marks.

24 **EIGHTH CLAIM**  
 25 **COMMON LAW UNFAIR COMPETITION/TRADEMARK INFRINGEMENT**

26 178. WSI realleges and incorporates by reference each of the allegations contained in  
 27 paragraphs 1 through 177 as though fully set forth herein.

28 179. Defendant has engaged in a pattern of willful and intentional acts designed to



1 appropriate WSI's prestige and goodwill, including without limitation, by copying WSI's  
2 products and trademarks.

3 180. Defendant has been and is passing off its online retail services as those of Plaintiff,  
4 causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval  
5 of Defendant's affiliation, connection, or association with Plaintiff, and otherwise damaging the  
6 public.

7 181. Defendant's conduct is unlawful, unfair and deceptive in violation of California  
8 law, and is deliberate, willful and intended to confuse.

9 182. As a direct and proximate cause of Defendant's wrongful conduct, Defendant has  
10 been and will continue to be unjustly enriched, and WSI has sustained and will continue to sustain  
11 diversion of trade with lost profits and injury to its business reputation and goodwill.

12 183. As a direct result of Defendant's conduct, WSI is entitled to injunctive relief and to  
13 recover damages and, if appropriate, punitive damages, costs, and reasonable attorneys' fees.

14 **NINTH CLAIM**  
15 **DILUTION UNDER CALIFORNIA LAW**  
16 **(Cal. Bus. & Prof. Code § 14200 *et seq.*)**

17 184. WSI realleges and incorporates by reference each of the allegations contained in  
18 paragraphs 1 through 183 as though fully set forth herein.

19 185. The WILLIAMS-SONOMA mark is famous in California, as well as throughout  
20 the United States, and has been prior to Amazon's unauthorized use of that mark.

21 186. Amazon's activities have diluted the distinctive quality of the WILLIAMS-  
22 SONOMA mark in violation of California trademark law, Business and Professions Code Section  
23 14200 *et seq.*

24 187. As a direct and proximate cause of Defendant's wrongful conduct, Defendant has  
25 been and will continue to be unjustly enriched, and WSI has sustained and will continue to sustain  
26 diversion of trade with lost profits and injury to its business reputation and goodwill.

27 188. As a direct result of Defendant's conduct, WSI is entitled to injunctive relief and to  
28 recover damages and, if appropriate, punitive damages, costs, and reasonable attorneys' fees.

**TENTH CLAIM**  
**VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**  
**(Cal. Bus. & Prof. Code §17200, et seq.)**

189. WSI realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 188 as though fully set forth herein.

190. Defendant has engaged in a pattern of willful and intentional acts designed to appropriate WSI's prestige and goodwill, including without limitation, by copying WSI's products, trademarks, and registered service marks.

191. Defendant has been and is passing off its online retail services as those of Plaintiff, causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval of Defendant's affiliation, connection, or association with Plaintiff, and otherwise damaging the public.

192. Defendant's conduct is unlawful, unfair and deceptive in violation of California Business & Professions Code § 17200.

193. As a direct and proximate cause of Defendant's wrongful conduct, Defendant has been and will continue to be unjustly enriched, and WSI has sustained and will continue to sustain diversion of trade with lost profits and injury to its business reputation and goodwill.

194. As a direct result of Defendant's conduct, WSI is entitled to injunctive relief and to recover damages and, if appropriate, punitive damages, costs, and reasonable attorneys' fees.

**ELEVENTH CLAIM**  
**DIRECT INFRINGEMENT OF COPYRIGHT**  
**(17 U.S.C. § 501 et seq.)**

195. WSI repeats and realleges the allegations contained in paragraphs 1 through 194 as though fully set forth herein.

196. The Stacked Bark Image is an original, creative work in which Plaintiff owns or has exclusively licensed a copyright registered with the United States Copyright Office.

197. Without permission or authorization from WSI and in willful violation of its rights under 17 U.S.C. § 106, Amazon improperly and illegally copied, reproduced, indexed, stored, distributed, adapted, and/or publicly displayed The Stacked Bark Image.

198. Discovery will show that Amazon also infringed numerous additional copyrighted

works by selecting and then reproducing and publicly displaying them, thereby violating Plaintiff's exclusive rights in its copyrights in the cases where there were multiple sellers contributing to a Frankenstein product page using WSI's copyrighted material.

199. Amazon's reproduction and display of WSI's copyrighted images constitutes willful copyright infringement.

200. In the case where there are multiple sellers contributing to a Frankenstein product page, Amazon's reproduction and display of WSI's copyrighted images is not subject to 17 U.S.C. § 512 safe harbor protection because Amazon's algorithm takes an active role in selecting which seller-submitted images are reproduced and publicly displayed, at its sole discretion for the purpose of promoting sales on its marketplace, from which Amazon directly profits. The images are reproduced and publicly displayed at Amazon's direction, rather than at the direction of one of its marketplace sellers.

201. As a direct and proximate cause of Amazon's copyright infringement, WSI is entitled to injunctive relief and to recover damages and, if appropriate, punitive damages, costs, and reasonable attorneys' fees.

202. As a direct and proximate cause of Amazon's copyright infringement, Amazon has been and will continue to be unjustly enriched.

203. As a direct and proximate cause of Amazon's copyright infringement, WSI is entitled to statutory damages.

### **PRAYER FOR RELIEF**

WHEREFORE, WSI prays that the Court order the following relief:

- a. Judgment that Defendant willfully infringed the '542 patent;
- b. Judgment that Defendant willfully infringed the '823 patent;
- c. Judgment that Defendant willfully infringed the '822 patent;
- d. Judgment that Defendant willfully infringed the '750 patent;
- e. Judgment that Defendant has willfully infringed and counterfeited WSI's registered WILLIAMS-SONOMA Mark;
- f. Judgment that Defendant has diluted WSI's famous WILLIAMS-SONOMA Mark;

- 1 g. Judgment that Defendant has committed unfair competition in violation of the
- 2 Lanham Act and state law;
- 3 h. Judgment that Defendant has committed common law trademark infringement in
- 4 violation of the Lanham Act and state law;
- 5 i. Judgment that Defendant has committed false endorsement in violation of the
- 6 Lanham Act;
- 7 j. Judgment that Defendant has competed unfairly with WSI in violation of WSI's
- 8 rights under California law;
- 9 k. Judgment that Defendant willfully infringed WSI's copyrights under the Copyright
- 10 Act;
- 11 l. A permanent injunction enjoining Defendant from making, using, selling, or
- 12 offering to sell its infringing goods;
- 13 m. A permanent injunction enjoining Defendant from using the WILLIAMS-
- 14 SONOMA mark in conjunction with its online retail services and otherwise
- 15 infringing or diluting WSI's marks;
- 16 n. A permanent injunction enjoining Defendant from infringing WSI copyrighted
- 17 photos;
- 18 o. Damages, exemplary damages and disgorgement of profits in an amount to be
- 19 proven at trial;
- 20 p. Enhancement of damages including treble damages required to be awarded for
- 21 trademark counterfeiting;
- 22 q. Statutory damages of up to \$2,000,000 per counterfeit mark per type of goods sold
- 23 by Defendant.
- 24 r. Statutory damages of up to \$150,000 per copyrighted work infringed by
- 25 Defendant.
- 26 s. A declaration that this is an exceptional case;
- 27 t. Full costs, attorneys' fees, and pre- and post-judgment interest to the full extent
- 28 permissible by law; and

Dated: May 6, 2020

/s/ Annette L. Hurst

Attorneys for Plaintiff Williams-Sonoma, Inc.

**DEMAND FOR A JURY TRIAL**

Williams-Sonoma, Inc. hereby demands a trial by jury in this action.

Dated: May 6, 2020

ANNETTE L. HURST  
DIANA M. RUTOWSKI  
DANIEL D. JUSTICE  
MARGARET WHEELER-FROTHINGHAM  
Orrick, Herrington & Sutcliffe LLP

*/s/ Annette L. Hurst*

ANNETTE L. HURST

Attorneys for Plaintiff Williams-Sonoma, Inc.

**CERTIFICATE OF SERVICE**

I, Annette L. Hurst, certify that on the 6<sup>th</sup> of May 2020, I caused the foregoing document  
**SECOND AMENDED AND SUPPLEMENTAL COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF and EXHIBITS A through O** to be electronically transmitted to the  
Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing  
to the ECF registrants and attorneys of record in this case.

/s/ Annette L. Hurst

Annette L. Hurst